***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

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W.P.Nos.19715 & 19728 of 2005

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% 09.12.2005

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Between:

Md.Tajuddin and others

…Petitioners

AND

The Joint Collector & Ex.Officio Executive Director,

A.P.Civil Supplies Corporation Ltd., Karimnagar & others

...Respondents

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! Counsel for the Petitioners: Sri K.Venu Madhav

^ Counsel For The Respondents: Sri D.Linga Rao, Standing Counsel

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> Head Note:

? CITATIONS:

THE HON'BLE MR. JUSTICE L. NARASIMHA REDDY

W.P.No.19715 of 2005

Dated 09-12-2005

Between:

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Md.Tajuddin

…Petitioner

And

The Joint Collector & Ex.officio

Executive Director,

A.P. Civil Supplies Corporation Ltd.

Karimnagar and others

…Respondents

W.P.No.19728 of 2005

Between:

Theepireddy Manohar Reddy

…Petitioner

And

The District Manager,

A.P. Civil Supplies Corporation Ltd.

Karimnagar and others

…Respondents

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.Nos.19715 and 19728 of 2005

COMMON JUDGMENT:

These two writ petitions relate to the award of contract for transporting the essential commodities, belonging to the A.P. Civil Supplies Corporation Limited, from the Mandal Level Stock Points to different villages in the district. While W.P.No.19715 of 2005 relates to such contract from M.L.S. point Siricilla, the one in W.P.No.19728 of 2005 relates to the M.L.S. points Karimnagar and Sultanabad. In

both the cases, the tenders of writ petitioners were not accepted, on the ground that the rates quoted by them were not workable.

Petitioners contend that the very object of inviting tenders is to award the contract on economical rates, offered by the tenderers, and that there is no justification for the Corporation in rejecting their tenders.

On behalf of the Corporation, counter affidavits are filed, furnishing the facts and figures, in relation to the relevant tenders. It is stated that though the petitioners have offered fairly lower rates, their tenders were not accepted, because of the fact that such rates are unworkable, particularly, having regard to the increase in the cost of inputs. It is pleaded that the rates are below, than those that prevailed during the previous year.

The unsuccessful tenderer in W.P.No.19715 of 2005 filed a counter affidavit and pleaded that the Corporation has the discretion to award the contract, duly taking into account the workability of the same. Though respondents 3 and 4 in W.P.No.19728 of 2005 were served with notices, they did not enter appearance.

Sri K.Venu Madhav, learned counsel for the petitioners submits that the very intention behind inviting tenders is, to secure competitive rates, and unless any minimum rate is stipulated in the tender notice, the Corporation is under obligation to accept the lowest tender.

Sri D.Linga Rao, learned Standing Counsel for the respondents-Corporation, on the other hand, submits that the Corporation has reserved to itself, the right to accept or reject any tender even if it is the lowest, and that no interference is called for. He contends that the petitioners have indulged in unhealthy competition by quoting unworkable rates, and in all probability, the contract cannot be carried out, if awarded to the petitioners, having regard to the cost structure involved.

Through a tender notice dated 06-07-2005, the Corporation invited tenders in respect of seven items. The petitioners submitted their tenders for three items. Several others have also submitted their tenders. The rates are to be quoted for two stages, *viz*., one rate for a block of 8 KMs and the other for each K.M., beyond 8 KMs. While the petitioner in W.P.19715 of 2005 submitted his tender for the M.L.S point Siricilla, petitioner in W.P.No.19728 of 2005 submitted his tender for M.L.S points Karimnagar and Sultanabad.

The petitioners specifically pleaded that the rates quoted by them were the lowest. The statement of the particulars of all the tenders received for the three M.L.S points, referred to above, disclose that the rates quoted by the petitioners are the lowest. In addition to consideration of the rates quoted in the tenders, the Corporation undertook negotiations with the eligible tenderers. During the negotiations, it so emerged that the petitioner in W.P.No.19715 of 2005 quoted Rs.2.80 ps. for 8 KMs, and Rs.0.18 ps., for each KM, beyond that distance. The corresponding figures quoted by the 4th respondent therein are, Rs.2.98/0.19 ps. Similarly, the petitioner in W.P.No.19728 of 2005 quoted Rs.3.60/0.12 ps., for the M.L.S point Karimnagar, and the 3rd respondent therein quoted Rs.4.40/0.14 ps. As regards the M.L.S point Sultanabad, the petitioner quoted Rs.3.12/0.12 ps., whereas the rates quoted by the 4th respondent are Rs.4.19/0.17 ps. The justification pleaded by the Corporation for not awarding the contract to the petitioners is that the rates quoted by them are less than the existing rates. For that matter, those quoted by the 4th respondent in the first writ petition are also less by 3.74%, than the existing rates.

Neither in the tender notice, nor in any other proceedings, the Corporation indicated that the rates quoted below, than the existing rates; would not be considered. No minimum rate as such was stipulated. Wherever such conditions are to be imposed, the tenders would be clear. For example, while awarding work or maintenance contracts, a condition would be incorporated in the tender notice, to the effect that the successful tenderer shall be under obligation to pay to the employees engaged for the work, the minimum wages, stipulated by the Government. In such cases, no tender, which is to result in payment of wages, less than the minimum, prescribed by the Government, can be considered at all. Similarly, in the contracts for sale of any items, the upset prices are indicated, and any tender, offering a rate less than that, is liable to be rejected.

In the instant case, the Corporation did not indicate any such conditions. At least, during the course of negotiations, they ought to have indicated that rates below a particular level cannot be accepted at all. In such an event, the considerations would have been, as regards the experience, number of vehicles possessed by the tenderers, condition of such vehicles etc. The whole exercise was undertaken on pure subjective lines, leaving the parties to guess for themselves. The entire tendering process was reduced to an empty formality. Such an approach

cannot be countenanced.

A tenderer cannot be made to face conditions, which are not incorporated in the tender notice, or in the tender form. Therefore, the action of the respondents cannot be sustained in law.

For the foregoing reasons, the writ petitions are allowed, and the orders passed by the A.P. Civil Supplies Corporation, awarding the contracts in respect of M.L.S points, Karimnagar, Sultanabad and Siricilla; are set aside. The Corporation shall undertake negotiations once again with all the eligible tenderers, duly indicating the necessary parameters, such as any minimum or maximum rates, or comparison of ability or experience of the contractors; in the event of the rates being equal, etc. This exercise shall be completed within a period of three weeks from the date of receipt of a copy of this order. Pending such exercise, status quo obtaining as on today shall be maintained.

There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt. 09-12-2005.

Note:

L.R. copy to be marked.

Issue c.c in three days.

*(B/O) KO**